UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/C.12/1998/SR.41/Add.1
27 November 1998

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Nineteenth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)*
OF THE 41st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 24 April 1998, at 11.00 a.m.

Chairperson: Mr. ALSTON

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* The summary record of the first part (closed) of the meeting appears as document E/C.12/1998/SR.41.

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GE.98-19884 (E)

The public part of the meeting was called to order at 11 a.m.

CONSIDERATION OF REPORTS

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Third periodic report of Germany (continued)
(E/C.12/1998/104/Add.14; E/C.12/Q/GER.1; in-session document with no symbol containing the replies of the Government of Germany to the questions raised in the list of issues

1. At the invitation of the Chairperson, the members of the delegation of Germany took places at the Committee table.

Articles 1 to 5 (continued)

2. Mr. HÖYNCK (Germany), referring to the figure given at the previous meeting for the proportion of GDP which Germany spent on development aid, regretted that it was below the 0.7 per cent target for such aid, which in fact few countries met. The new German Government would be endeavouring to reverse the current downward trend. During the period 1992-1996, Germany had spent US$ 7 to 8 billion on development aid, 40 per cent going to Africa, 30 per cent to south-east Asia and the Pacific, 12 per cent to Latin America and 10 per cent to countries of the Mediterranean and Near and Middle East. The amount spent on the management of development funds (overheads) depended on the project concerned and accounted for between 8 and 12 per cent of the whole. The general aim of development policy was to help to meet the basic needs of Germany's partners in the developing world in areas such as food, health and education. Such aid was not regarded as charity, every effort being made to ensure the engagement of the recipient communities in activities they themselves wished to promote. Of the projects concerned, 50 per cent directly concerned poverty eradication and 18 per cent education.

3. With regard to the treatment of university professors in the former German Democratic Republic (GDR), the general pattern, which varied in detail as systems varied between Länder, had been to establish a commission at each university, made up of members of the university staff and officials of the ministry responsible for cultural affairs in the Land concerned, to consider each member of the teaching staff on a case-by-case basis in order to determine whether the individual concerned met the criteria for both university teaching staff and public officials, since in Germany such staff belonged to the public service.

4. Mr. WEINBRENNER (Germany) said that no information on ethnic origin was requested when a census was taken in Germany since that was the wish of the ethnic minorities living in the country. The Sinti and Roma people, in particular, who had been victims of genocide during the Second World War, were especially anxious not to be marked out as a separate social group. A further example of compliance with a wish not to be identified by ethnic group, in order to prevent action against such groups, was the voluntary agreement on

the part of the media not to mention the ethnic group of any person committing a crime or engaging in violent behaviour unless it was necessary in order to understand the facts.

5. Mr. HÖYNCK (Germany) said that if the various ethnic groups living in Germany wished their members to be identified in census figures or elsewhere, the Government would certainly comply with those wishes.

6. Mr. WIMER ZAMBRANO asked whether there could be any comparison of the situation of former Communists after reunification with that of Nazis after the Second World War. For example, before that war Professor Husserl had been dismissed from his post at Freiburg University because of his Jewish origin, while his replacement Professor Heidegger had been dismissed after it because of his Nazi affiliations.

7. Mr. SADI said that presumably not everyone holding a senior post in the former GDR, whether in university teaching, administration or the sciences for example, had necessarily been a committed Communist who could not be reabsorbed into the mainstream of life in a reunited Germany. Was there any policy to reintegrate such people? It appeared unfair to reject them automatically for their views, even if each case was considered individually.

8. He asked whether it was considered that granting dual citizenship would help to eliminate racism and reduce tension between German citizens and foreign immigrants.

9. Mr. ADEKUOYE observed that not only university staff but other public servants in the former GDR had lost their posts following reunification. What had happened to them subsequently? Was there any likelihood that a minister in the government of the former GDR could become a minister in the reunified Germany? The former GDR had employed a system of re-education for persons not fitting into the system. Was Germany considering any such system to familiarize public officials of the former GDR with current conditions?

10. Ms. JIMÉNEZ BUTRAGUEÑO asked whether statistics were available on the number of former GDR public officials who had retained their posts. In her own country, which had also experienced a change of governmental system, officials from both sides of the divide had managed to work together. She hoped that could also be the case in Germany.

11. Mr. HÖYNCK (Germany) said it was difficult to make comparisons between different periods in a country's history because the background circumstances in each case were different. Circumstances also differed between one country and another. In any country that had gone through a difficult period the question of impunity for past acts was not an easy one to solve and depended principally on public opinion as to the right way to proceed. The three situations described by Mr. Wimer Zambrano were essentially different. Professor Husserl had been dismissed on racial grounds, which was clearly totally unacceptable in any circumstances. Professor Heidegger had been dismissed during a period when Germany had been trying to build a new society and it had not been considered feasible for persons specifically connected to the Nazis to continue to hold public posts. The period following the collapse of the former GDR was different again, in terms both of the historical context

and of the way in which it was perceived by the general public. Although certain similarities were discernible, the three cases could not be directly compared.

12. The fact of holding Communist views or having been a member of the ruling party in the former GDR was not a criterion precluding a person from employment in the public service. What was taken into account was whether the activities engaged in had formed part of the extremely oppressive system - the most oppressive in central and eastern Europe at that time - which had prevailed in the former GDR. The burdens imposed by the regime had been clearly evidenced by the large numbers of its citizens that had kept trying to leave the country. Many public officials had been intimately engaged in that system and the inhabitants of that part of Germany no longer wished to see them in the public service. Mr. Adekuoye's supposition that a high official of the former GDR could eventually hold a ministerial position in the reunified Germany did not appear a likely event. As to "re-education" of former GDR officials, the term was not a very welcome one in Germany in view of the use that had been made of it to describe the practices employed in certain formerly Communist countries. He did not have the figures for the number of public servants of the former GDR who were still employed in local administration, but if numerical data existed for what was a very complex situation, they would be sent to the Committee later. However, many administrative officials, teachers and other public employees were still in their former posts; otherwise the whole system would have broken down. At present, eight years after reunification, perceptions of the past were beginning to change. For example, political parties in Germany were currently discussing whether to abandon their policy of refusing to accept as members persons who had belonged to the ruling party in the former GDR.

13. It was not yet clear whether dual citizenship would help to solve the problem of racism and xenophobia, though he hoped so. For example, the recently elected mayor of one of the larger German towns had dual German and Turkish citizenship. Dual citizenship and the acceptance as German citizens of persons with family names of foreign origin should help to overcome the divide between German and immigrant communities. However, racism and xenophobia were not phenomena restricted to a single country. Germany would continue its efforts within the European Union, the Council of Europe and the United Nations to combat those evils.

14. Mr. WILLERS (Germany) said that an explanation of the system of public service in Germany would help in understanding the situation of public employees in the former GDR. Germany had two categories of public servant. The first consisted of tenured officials, whose appointments were permanent and who were sworn to service under the Constitution; their appointments were not governed by a contract of employment and they were not covered by the ordinary social security system. The second category was made up of State employees, who held a contract of employment under conditions fixed by collective agreement. Following reunification, public servants in positions normally filled by State employees had generally kept their posts, although some posts had been abolished in order to reduce duplication of work while other officials had had to accept a reduction in grade. The Coalition Agreement concluded between the Federal Republic of Germany and the former GDR before reunification contained a number of provisions relating to certain

categories of public official who could not be retained in the public service, not because of their views but because their former functions would no longer exist. That had applied to university teaching staff whose sole function had been to teach Marxist and Leninist doctrine.

15. The CHAIRPERSON asked what the position was with regard to the human rights commission whose establishment had been foreseen in the Coalition Agreement.

16. Mr. HÖYNCK said the Agreement had indeed provided for the establishment of an independent human rights institute in Germany. The present Government had not yet been long enough in office to have taken measures to establish it. However, the former parliamentary sub-commission on human rights had already been raised to the level of an independent commission, with responsibility for all human rights without distinction. The Minister for Foreign Affairs had also established a new post of Commissioner for Human Rights within his ministry. The official concerned would act independently and report directly to the Minister. The Committee would be kept informed of developments.

17. The CHAIRPERSON said the Committee would wish to emphasize the desirability of attributing a significant role to economic rights in the work of the new institute to be established.

Articles 6 to 8

18. Mr. CEVILLE noted that the former Government had introduced a number of amendments to labour legislation. For instance, the Protection Against Unfair Dismissal Act now applied to companies with more than 11 employees rather than more than 6 employees; under the amended child labour legislation, the minimum age had been lowered from 14 to 13. What was the position of the new Government regarding such legislation?

19. Mr. TEXIER said that one of the main problems facing Germany, like many other European countries, was unemployment. According to information provided by NGOs, in January 1998 the total number of unemployed persons registered in Germany had represented 12.6 per cent of the population, 21.1 per cent of whom came from former East Germany. Were those figures accurate and what was being done to bridge the gap in unemployment rates between the new and old Länder? The Government seemed to be particularly concerned about three categories of the unemployed: young people, the long-term unemployed and persons over the age of 50. Had there been any reduction in the unemployment figures for those respective categories as a result of the implementation of the Programme for More Growth and Employment? He was worried about the possible adverse effects of the objectives set for that programme, namely to limit ancillary wage costs, reduce the public sector share and render the labour market more flexible, on the workforce.

20. What exactly was the situation as regards the number of hours in a working week in Germany? Did the delegation believe that a shorter working week might have an effect on unemployment rates?

21. Apparently there was no minimum salary established at federal level, such matters being dealt with through collective bargaining. Did that lead to discrepancies in the minimum salary between the different Länder, particularly between the old and the new ones?

22. On the subject of trade union rights, he shared the concern already voiced by other international bodies, including the Human Rights Committee and the interested ILO expert committee, about the ban on strikes, which applied to a very broad category of civil servants, even those of lower rank who did not hold public office. He would welcome more information on that matter. Also, was the fact that German train drivers had not taken part in the recent railway strike supported by their colleagues in many European countries connected with it in any way?

23. Mr. CEAUSU expressed concern about the situation of foreign workers in Germany. According to paragraph 92 of the report, the number of foreign workers liable to pay social insurance contributions had been 2.1 million in March 1995. What about the number of foreign workers not paying social insurance contributions?

24. From the figures provided in paragraphs 120 and 121 of the report, it appeared that the unemployment rate for foreigners was twice as high as for Germans and that the overwhelming majority of them had no vocational qualifications. In other countries, contracts were given to foreign workers for one employer or for a particular employment sector. Why were work permits issued to foreigners in Germany without their having any job prospects? What was the policy of the Government on such matters?

25. Mr. SADI noted that the new Minister of Finance was giving priority to the creation of jobs as a means of combating unemployment, but apparently the Bundesbank (Central Bank) was taking a different line. Who did the delegation expect would get the upper hand in the current debate, particularly with regard to the lowering of interest rates?

26. Mr. WIMER ZAMBRANO said that German tradesmen and craftsmen enjoyed a good reputation, perhaps due to their long-standing tradition of handing down skills to other members of the family. How could that tradition be reconciled with Germany's obligations under the relevant ILO conventions on child and juvenile labour?

27. Mrs. JIMÉNEZ BUTRAGUEÑO sought clarification concerning a report carried recently in the Spanish press to the effect that the new German Government intended to lower the age of early retirement to 60. It contradicted information contained in the written replies according to which under the Programme for More Growth and Employment the age limit for early retirement was to be gradually increased to 65. Furthermore, what exactly was meant by the statement made in the same context that "expenditures on rehabilitation ... is being restricted"?

28. Mr. ADEKUOYE said that views differed considerably on the causes of unemployment in Germany, possible factors included the rigidities of the job

market, high labour costs and high interest rates. What practical difficulties had Germany encountered in its efforts to combat unemployment so far, and what would happen if the economy went into decline?

29. He was aware that certain measures such as language and vocational training had been adopted in Germany to improve the employment prospects of the many foreigners residing there. How successful had they proved?

30. Mr. KOUZNETSOV sought confirmation that university teachers were considered as civil servants in Germany and therefore unable to strike. Secondly, what monitoring mechanism existed to ensure compliance with legislation permitting children aged 13 to work for up to three hours a day on family farms?

31. Mr. WILLERS (Germany), replying to Mr. Ceville's question, said that since amendments to the Protection Against Unfair Dismissal Act had not produced the desired effects, the present government had agreed that it should be further amended to reflect the original provisions.

32. In reply to Mr. Wimer Zambrano, he said that the minimum age of employment was laid down in the Act on the Protection of Young Persons at Work, which had recently been amended to bring it into line with a European Union directive. The normal minimum age was 18, but under the legislation it was possible for children as young as 13 to do a few hours' light work, provided that it was compatible with their school timetable and not harmful to their health. There was a mechanism in Germany, similar to that of the Labour Inspectorate in France, for monitoring compliance with legislation on child labour and inspectors might well visit small family-run businesses or farms to ensure that children were not working long hours.

33. The amendments to the Act on the Protection of Young Persons at Work were not extensive. For example, formerly young people had been allowed to deliver newspapers, but not advertising material. However, it had been found that such a restriction was rather artificial and served little purpose, since in fact newspapers were heavier to carry than advertising material.

34. As far as unemployment was concerned, there had been a slight fall in recent months in the overall rate, which now stood at around 11 per cent. There nonetheless remained a notable difference between the unemployment rates in the new and old Länder, the reasons for which he had explained during the previous meeting. Specific measures undertaken by the previous government to combat that particular problem would be pursued by the new government.

35. The recent rise in youth unemployment, now higher than the overall unemployment rate, was a matter of some concern in Germany. In the past it had been believed that Germany's special dual system of vocational training, through job placement and training in institutions, afforded some degree of protection for employment levels. The new Government planned to tackle the problem by creating 100,000 new jobs in the immediate future. The policy of limiting wage costs adopted by the former Government under the Programme for More Growth and Employment would also be followed through, without, however,

any prejudice to the workforce or the unemployed. Regrettably there was no ideal solution to the problem: the Government would do its best, but could not guarantee results.

36. The length of the working week varied. Theoretically, civil servants worked 38.5 hours a week; in practice most worked much longer hours, and federal civil servants were not entitled to overtime payments. In other sectors a working week of between 37.5 and 36 hours was usual. Like wages, working hours were regulated exclusively by collective agreements. Except in the case of civil servants, the Government could legislate for a maximum number of working hours, but not for a minimum number. As to the effects of a reduced working week on the labour market, there were probably as many theories as there were teachers of economics. The best hope for the future probably lay in flexible working hours.

37. Wages were set by the social partners, through collective agreements. Some traditional regional disparities persisted, as there were no nationally applicable regulations. In practice, a level negotiated in one sector often constituted a precedent adopted in other sectors. The disparity between wages in the old and new Länder had been quite considerable at reunification, but had since been gradually narrowed through collective bargaining, and in some sectors had disappeared altogether. Although there was no minimum wage as such, with very few exceptions the negotiated wage effectively constituted a minimum, because most enterprises were bound to honour the wage levels negotiated in collective agreements.

38. Mr. TEXIER asked whether the new Government was likely to use the same weapons as had the previous Government in its fight against unemployment, or whether it envisaged recourse to more interventionist policies such as public works programmes.

39. Mr. HÖYNCK (Germany) said that the new Government was not trying to lower the social safety net, but to alter it, while at the same time reducing unemployment. According to the policy statement delivered by the Chancellor to the Bundestag on 10 November 1998, there were grounds for believing that the high cost of Germany's social security system was driving more and more people into illegal jobs with no social protection, or into spurious self-employment. Thus, social security in the abstract was increasingly producing social insecurity in practice, and the way it was organized endangered or destroyed jobs. The social safety nets must be turned into a trampoline, so that those in need of temporary help could quickly bounce back on to their own feet.

40. Mr. WILLERS (Germany) confirmed that the new Government would place more stress on job promotion than had the previous Government. On the thorny question of civil servants' right to strike, he said that Germany's view of the question was that the sole purpose of strike action was to improve working conditions. Consequently, tenured civil servants, whose working conditions were established not by collective agreements but by legislation, did not enjoy the right to strike, although that right was set forth in article 6 (4) of the European Social Charter and in article 8 of the Covenant. No problem arose with the latter instrument, which provided for a derogation in the case of members of the administration; and when ratifying the former instrument,

Germany had entered a reservation on the question. In Germany, then, the right to strike depended on the status of the employee, not on his or her responsibilities, so that State employees and workers enjoyed the right to strike, regardless of their functions, while those train drivers who had voluntarily retained the status of civil servant when the railways had been privatized were still not entitled to strike. Teachers, as tenured civil servants, were also not permitted to strike.

41. In the framework of ILO, Germany had acknowledged that the right to strike was an integral part of the freedom to form trade unions; however, as ILO Convention No. 87 made no mention of the right to strike, it considered it had some latitude in that regard. Unfortunately, Germany's view of the matter was not shared by the ILO committee of experts. The best way of reconciling Germany's position with that of ILO over the long term would perhaps be to ensure that the number of tenured civil servants was reduced, and also that only officials exercising certain specific responsibilities enjoyed that status.

42. The number of foreign workers had fallen slightly, from about 1,996,000 (or 9 per cent) in 1997 to about 1,954,000 (or 8.9 per cent) in March 1998. The general rate of unemployment had risen from 12.7 per cent in 1997 to 14.0 per cent in January and February 1998, before falling to 11.2 per cent in October 1998. The rate of unemployment among immigrant workers had fallen from 22.4 per cent in January 1998 to 19.2 per cent in October 1998. There had thus been a slow improvement in the situation of both categories in recent months. That improvement was partly attributable to the policy of providing training to young foreigners who wished to work in Germany but lacked the requisite qualifications.

43. The question concerning residence permits for persons without adequate qualifications was largely hypothetical, as there had been no mass recruitment of foreign labour for the past 25 years. New foreign entrants into the labour market were mainly asylum seekers whose refugee status had been recognized; such persons could not reasonably be required to produce certification of their vocational qualifications.

44. On the question of vocational training, the system of masters and apprentices did indeed date back to the Middle Ages, but it had evolved over time in response to new requirements. Far from constituting an obstacle to young people's vocational training, the system had long been regarded as making an important contribution to the low rate of youth unemployment.

45. While the previous Government had contemplated actually raising the age of retirement as a means of reducing the burden on the social security system, the incoming Minister of Labour had stated his intention of lowering it to 60 on a voluntary basis. Theoretically, civil servants retired at the age of 65; in practice, taking account of early retirement on health and other grounds, the average age of retirement was just below 59.

46. Mr. HÖYNCK (Germany) said that the question concerning Bundesbank policy could be reduced to other terms, namely, whether it was high interest rates or low interest rates which were good for employment, and how high or low they should be. That question opened up the whole highly political issue of the

respective merits of supply-side and demand-side economics, which was extremely difficult to incorporate into a framework of legal obligations. Were an unemployed individual or group to bring an action against a Government on the basis of the Covenant, alleging that by placing undue emphasis on supply-side economics it was generating unemployment, it would be no easy task for a court to rule on the case.

47. Mr. AHMED asked for clarification regarding the situation of refugee workers. According to information submitted by NGOs, under the new system refugees were banned from employment and required to undertake certain tasks at a remuneration of DM 2 per hour. Asylum seekers who had entered the Federal Republic of Germany after May 1997 were not allowed to take up employment. Other asylum seekers and tolerated refugees were allowed to work only if the potential employer had tried unsuccessfully for six weeks to find a preferable employee. The question arose whether, with unemployment among foreigners running at 22 per cent, it would not be in Germany's financial interest to allow such persons to work.

48. Mr. WEINBRENNER (Germany) said that, in the interest of reducing public subsidies to asylum seekers, it might well be worth while to allow them to work. However, that consideration had to be reconciled with the need to safeguard jobs for German nationals. Any decision taken to assist the one sector would inevitably harm the other. The requirements imposed on asylum seekers to perform certain tasks were comparable to those imposed on German nationals receiving public subsidies. Asylum seekers who declined to undertake such work still received a reduced subsidy.

The meeting rose at 1 p.m.